

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

ORDER

Genevieve Zimmerman, for Plaintiffs.
Ben Hulse, for Defendants.

THIS MATTER came before the undersigned United States Magistrate Judge on the parties' respective positions regarding a deadline for filing *Lexecon* waivers in the newly populated pool of cases from which the bellwether trials will be selected. Pretrial Order #24 (ECF No. 1061) sets out the process to select a new group of bellwether cases to be tried. Nothing in Pretrial Order #24 expressly addresses the issue of *Lexecon* waivers. By Letter, dated February 5, 2018 (ECF No. 1078), Defendants' counsel raised the issue of the timing of *Lexecon* waivers. Defendants request that the Court order that all *Lexecon* waivers be filed by February 9, 2018. Plaintiffs' counsel objects to the Court setting a deadline for *Lexecon* waivers to be filed absent a formal motion, but by Letter dated February 7, 2018 (ECF No. 1079), suggests that they will use their best efforts to provide information on the waivers by the end of February.

The parties' respective Letters regarding the imposition of a deadline for *Lexecon* waivers have been docketed (ECF Nos. 1078, 1079). The Court concludes that the Letters provide a sufficient record from which it can decide when *Lexecon* waivers must be filed. The Court concludes further that the record must reflect, which of the newly populated pool of 100 cases might be

bellwether inappropriate, by reason of a *Lexecon* waiver not being filed. If *Lexecon* waivers are filed by February 23, 2018, the parties will have ample time to select from the remaining bellwether appropriate cases the 16 cases they will propose to the Court by March 12, 2018.

Based upon the foregoing, the Court **HEREBY ORDERS** that *Lexecon* waivers must be submitted to the Court by **February 23, 2018**.

DATED: February 8, 2018

S/Franklin L. Noel

FRANKLIN L. NOEL
United States Magistrate Judge